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Before the

**Federal Communications Commission**

Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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In the Matter of the Application of )

GAF BROADCASTING COMPANY, INC., )

For Renewal of License of Station )  
WNCN (FM), New York, New York )  
..... )

MM Docket No. 93-54

File No.  
BRH-910201WL

To: The Review Board

**CONSOLIDATED REPLY TO OPPOSITIONS TO  
MOTION TO ENLARGE ISSUES**

LISTENERS' GUILD, INC. ("Guild"), by its attorney, David M. Rice, hereby respectfully replies to the *Oppositions*<sup>1</sup> filed on October 20, 1993 by the Mass Media Bureau ("Bureau") and by GAF Broadcasting Company, Inc. ("GAF Broadcasting") to the Guild's *Motion to Enlarge Issues* in the above-captioned hearing proceeding filed October 8, 1993.

GAF Broadcasting's contention that the Guild lacks standing to seek enlargement of issues, GAF *Opposition* at 2-3, simply disregards the Guild's accompanying *Petition for Intervention*, with which the *Motion to Enlarge Issues* is interdependent. If, as the Guild submits, there is good cause for adding the

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1. The Bureau filed a "*Consolidated Opposition*" ("Bureau *Opposition*") which included its response to the Guild's *Petition for Intervention* filed October 8, 1993. GAF Broadcasting filed both an *Opposition to Motion to Enlarge Issues* ("GAF *Opposition*") and a separate *Opposition to Petition for Intervention*. Although, pursuant to 47 C.F.R. §1.294 (b)-(c), a reply is permissible only with respect to the *Motion to Enlarge Issues*, the two Guild pleadings are so mutually interdependent that some reference herein to the *Petition for Intervention* is unavoidable.

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proposed issues, there is also good cause for admitting the Guild — already a petitioner to deny which has a continuing interest in those aspects of the WNCN renewal proceeding that have been referred to the EEO Branch of the Mass Media Bureau — to party status in a reopened hearing. Accordingly, the Guild's *Motion to Enlarge Issues* as well as its *Petition for Intervention* should be considered on their merits.

There is also no merit to the Bureau's suggestion that the Guild's *Motion* and accompanying *Petition* amount to "groping for alternative means to continue to harass the licensee." Bureau *Opposition* at 4. To the contrary, as explained in the Affirmation of David M. Rice, Attachment A to the *Motion to Enlarge Issues*, the circumstances upon which that *Motion* was based came — unsolicited — to the attention of the Guild's counsel just 15 days prior to the filing of the *Motion*. Because the substance of the claims asserted in the New Jersey action brought against GAF Broadcasting<sup>2</sup> by Matthew Field, its former Senior Vice President and General Manager, bore a strong similarity to issues that the Guild had previously sought to raise as grounds for denying GAF Broadcasting's renewal application, and because GAF Broadcasting had relied extensively upon Mr. Field in opposing the Guild's prior pleadings, the Guild concluded that it was appropriate to raise those matters, particularly since they have never previously been considered by the Commission, and since GAF Broadcasting's meager and untimely *Amendment* of September 29, 1993 was hardly adequate to apprise the Commission of their full significance.

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2. The claims were also asserted against GAF Broadcasting's corporate parent, GAF Corporation, its controlling shareholder, Samuel J. Heyman, and another senior officer, Carl Eckardt.

Whatever GAF Broadcasting's obligation may have been to inform the Commission of the filing of Mr. Field's action, its contention that its "voluntary" filing of the September 29, 1993 Amendment was "a forthright demonstration of candor," GAF Broadcasting *Opposition* at 10, and that its untimeliness was "at most, highly technical and without prejudice," *id.*, are themselves disingenuous. Indeed, the then-pending request for approval of a settlement between GAF Broadcasting and the remaining competing applicant, far from showing an absence of prejudice from a violation of § 1.65, demonstrates that GAF Broadcasting had a strong motive for withholding adverse information from the Commission until the settlement had been approved.<sup>3</sup> In fact, GAF Broadcasting also waited until after Mr. Field had issued a press release, dated September 13, 1993, announcing the filing of his action against GAF Broadcasting and expressly suggesting its relevance to GAF Broadcasting's fitness to be a broadcast licensee. Thus the supposedly "voluntary" *Amendment* was filed only after GAF Broadcasting had secured an *Order* renewing its license and after the publicity initiated by Mr. Field had made it inevitable that his claims would ultimately come to the Commission's attention.<sup>4</sup>

In light of the foregoing, and for the reasons set forth in the Guild's *Motion to Enlarge Issues*, the hearing should be reopened and the hearing issues should be

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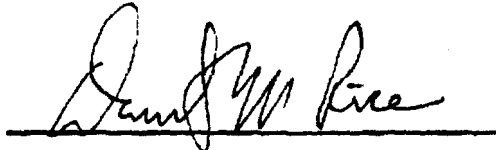
3. That approval came in the *Memorandum Opinion and Order* of Administrative Law Judge Joseph Chachkin, released September 17, 1993 (FCC 93M-593).

4. The Guild, of course, cannot read the minds of GAF Broadcasting's principals and thus "know" the reason for their decision not to file an amendment within thirty days after the commencement of Mr. Field's action and later to file such an amendment following the issuance of Judge Chachkin's *Order* and Mr. Field's press release. However, in the absence of an explanatory affidavit from those principals who do have such knowledge to rebut the natural inference from such circumstances of an intent to withhold information, the Commission should not blindly accept GAF Broadcasting's counsel's characterization of the delay as "unintentional." GAF Broadcasting *Opposition* at 11.

enlarged to encompass each of the proposed issues set forth therein, and the Guild should be permitted to participate fully as a party in interest with respect to all subsequent proceedings thereon.

Dated: November 1, 1993

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "David M. Rice", is written over a horizontal line.

David M. Rice

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Attorney for Listeners' Guild, Inc.

**CERTIFICATE OF SERVICE**

I, DAVID M. RICE, hereby certify that the foregoing "CONSOLIDATED REPLY TO OPPOSITIONS TO MOTION TO ENLARGE ISSUES" was served this 1st day of November, 1993, by mailing a true copy thereof by United States first class mail, postage prepaid, to each of the following:

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